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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BRYAN J. MOLES and SUDHINDRA P. HERLE

Appeal 2009-007370
Application 09/475,602
Technology Center 2400

Before CARLA M. KRIVAK, THOMAS S. HAHN,
and ELENI MANTIS MERCADER, *Administrative Patent Judges*.

MANTIS MERCADER, *Administrative Patent Judge*.

DECISION ON APPEAL¹

¹ The two-month time period for filing an appeal or commencing a civil action, as recited in 37 C.F.R. § 1.304, or for filing a request for rehearing, as recited in 37 C.F.R. § 41.52, begins to run from the “MAIL DATE” (paper delivery mode) or the “NOTIFICATION DATE” (electronic delivery mode) shown on the PTOL-90A cover letter attached to this decision.

STATEMENT OF THE CASE

Appellants appeal under 35 U.S.C. § 134(a) from the final rejection of claims 1-7, 9-15, and 17-20.² We have jurisdiction under 35 U.S.C. § 6(b).

We affirm-in-part.

INVENTION

Appellants' claimed invention is directed to a security device capable of preventing an unprovisioned mobile station from accessing an Internet Protocol (IP) data network through a wireless network. The security device comprises a first controller capable of receiving from the unprovisioned mobile station an IP data packet having an IP packet header and an IP packet payload and replacing the IP packet header with a replacement IP packet header comprising an IP address of a selected one of at least one provisioning server of the wireless network. *See Spec.* 9:7-16.

Claim 1, reproduced below, is representative of the subject matter on appeal:

1. For use in a wireless network comprising a plurality of base stations, each of said base stations capable of communicating with a plurality of mobile stations, a security device capable of preventing an unprovisioned one of said plurality of mobile stations from accessing an Internet protocol (IP) data network through said wireless network, said security device comprising:

a first controller capable of receiving from said unprovisioned mobile station an IP data packet comprising an IP packet header and an IP packet payload and replacing said IP packet header with a replacement IP packet header comprising an IP address of a selected one of a plurality of provisioning servers associated with said wireless network.

² The Examiner noted that claims 8 and 16 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten (Ans. 5).

THE REJECTION

The Examiner relies upon the following as evidence of unpatentability:

Applegate	US 6,321,336 B1	Nov. 20, 2001
Hsu	US 6,587,684 B1	Jul. 1, 2003

The following rejection is before us for review:

The Examiner rejected claims 1-7, 9-15, and 17-20 under 35 U.S.C. § 103(a) as being unpatentable over Hsu in view of Applegate.

ISSUE

The pivotal issue is whether the combination of Hsu and Applegate teaches “an IP address of a selected one of a plurality of provisioning servers” as recited in independent claim 1.

ANALYSIS

Appellants argue (App. Br. 15) that Hsu describes only a single provisioning server, not a plurality of provisioning servers as required by claim 1. We are persuaded by Appellants’ argument.

The Examiner (Ans. 7) relies on Hsu (col. 7, ll. 5-17; col. 14, ll. 3-12) for teaching a provisioning system including a plurality of provisioning servers, revision control servers, etc. When we turn to the relevant cited portions, Hsu teaches “a provisioning server 24” (col. 7, ll. 5-17 (emphasis added)) and software that allows a user to activate a new service (col. 14, ll. 3-12). Thus, Hsu does not teach the limitation of “an IP address *of a selected one of a plurality of provisioning servers*” (emphasis added) because Hsu only teaches a single provisioning server. Hsu refers to a

variety of different types of servers, but not a plurality of provisioning servers. Applegate does not cure the above cited deficiency.

Accordingly, for the reasons articulated *supra*, we will reverse the Examiner's rejection of independent claim 1, and for similar reasons, the rejections of dependent claims 2-8 and 17-20.

Appellants repeat the same argument stated *supra* for claim 9 (App. Br. 28). We are not persuaded by Appellants' argument. Claim 9 refers to "at least one provisioning server," and thus, a single provisioning server is not precluded. Accordingly, Hsu's single provisioning server satisfies the recited "at least one provisioning server" of claim 9.

We are also not persuaded by Appellants' additional argument that Applegate does not teach selecting "one proxy from a plurality of proxies" (App. Br. 27) because, as stated above, claim 9 does not require a selection from a plurality of provisioning servers.

Furthermore, we are not persuaded by Appellants' arguments (App. Br. 28) regarding lack of motivation, and use of impermissible hindsight. We agree with the Examiner (Ans. 6) that instead of supplying the URL of a provisioning server to a mobile station as taught by Hsu, substituting an IP address with an IP address of a directed destination (i.e., such as the destination of a provisioning server) requiring authorization (col. 5, ll. 34-64; Abstract) as taught by Applegate, would in fact enhance the security of the system.

Accordingly, we will affirm the Examiner's rejections of claims 9-16.

CONCLUSIONS

Hsu and Applegate do not teach “an IP address of a selected one of a plurality of provisioning servers” as recited in independent claim 1.

Hsu teaches “at least one provisioning server” as recited in claim 9.

ORDER

The decision of the Examiner to reject claims 1-7 and 17-20 is reversed. The decision of the Examiner to reject claims 9-15 is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

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